68TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1257

AMENDMENT TO THE NATIONAL PROHIBITION ACT AS AMENDED AND SUPPLEMENTED

JANUARY 19, 1925.—Referred to the House Calendar and ordered to be printed

Mr. MICHENER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 728]

The Committee on the Judiciary, to which was referred the bill (H. R. 728) amending the national prohibition act, as amended and supplemented, having considered the same, reports favorably thereon with certain amendments, and, as so amended, recommends that the bill do pass.

The following changes were accepted by the committee as amendments:

On page 1, line 13, after the word "fined," insert "for a first offense."

On page 2, line 1, after the word "year," strike out the period and insert a colon and the following: "For any subsequent offense, he shall be fined not less than $600 nor more than $2,000, and be imprisoned not less than one year nor more than five years."

On page 3, line 7, after the word "title," insert "or forges any permit, or physician's prescription, or knowingly possesses any such forged permit, or physician's prescription, provided for in this act."

On page 3, line 12, after the word "than," strike out the words "six months" and insert in lieu thereof the words "one year."

On page 3, line 12, after the word "than" and before the word "years," strike out the word "five" and insert in lieu thereof the word "ten."

On page 4, line 22, after the word "the," strike out the word "commission," and in lieu thereof insert the word "commissioner."

H. R. 728, the bill under consideration, amends sections 21, 24, and 29 of Title II and section 15 of Title III of the national prohibition act.

It is the purpose of this act to increase penalties for violation of certain sections of the national prohibition act. This proposed legis-

lation does not disturb the present decisions and interpretations of the present or existing prohibition statutes.

The penalty clause of section 21 of Title II, as it now stands, provides:

> shall be fined not more than $1,000 or be imprisoned for not more than one year, or both.

It is sought to increase this penalty, making the minimum fine, for a first offense, not less than $300 nor more than $1,000, and imprisonment not less than 90 days nor more than one year, and for any subsequent offense not less than $600 nor more than $2,000, and imprisonment not less than one year nor more than five years.

The only change in section 24 is by substituting the word "and" for the word "or"; that is, making imprisonment necessary for violations under this section.

Section 29 provides that—

> Any person who manufactures or sells liquor in violation of this title shall for a first offense be fined not more than $1,000, or imprisoned not exceeding six months, and for a second or subsequent offense shall be fined not less than $200 nor more than $2,000 and be imprisoned not less than one month nor more than five years.

By the terms of the proposed amendment the above penalty is increased so that for a first offense the offender shall be fined not less than $300 nor more than $1,000, and imprisoned not less than 90 days nor more than one year, and for a second or subsequent offense shall be fined not less than $600 nor more than $2,000 and be imprisoned not less than one year nor more than five years.

The amendment also provides that one who forges any permit or physician's prescription, or knowingly possesses any such forged permit or physician's prescription, provided for in the national prohibition act, receives the same penalty for violation of the law as one who manufactures or sells liquor.

Under the second paragraph of section 29, as it now stands, the penalty for certain specific violations, and for all violations of Title II for which a special penalty is not prescribed is for a first offense a fine of not more than $500, for a second offense not less than $100 nor more than $1,000, or imprisonment not more than 90 days; for any subsequent offense not less than $500 and imprisonment not less than three months nor more than two years.

It is proposed to change this penalty so that the fine for the first offense shall be not less than $100 nor more than $500; for a second offense not less than $300 nor more than $1,000, or be imprisoned not more than 90 days, and for subsequent offenses not less than $600 nor more than $2,000 and be imprisoned not less than six months nor more than two years.

By the terms of section 15, Title III, the punishment under the law as it now stands is, for a first offense:

> not exceeding $1,000, or imprisonment not exceeding thirty days, or both, for a second or cognate offense to a penalty of not less than $100 nor more than $10,000 and to imprisonment not less than thirty days nor more than one year.

The proposed change would make the penalty, for the first offense, not less than $300 nor more than $1,000, and imprisonment of not less than 90 days nor more than one year, and for a second or cognate offense of not less than $600 nor more than $10,000, and to imprisonment of not less than six months nor more than one year.

The second paragraph of section 20, Title III, now provides—

for a fine of not more than $1,000 or imprisonment not exceeding six months for a first offense, and by a fine not less than $200 nor more than $2,000 and imprisonment not less than one month nor more than five years for a second or subsequent offense.

It is proposed to change this section so that the punishment shall be—

by a fine of not less than $300 nor more than $1,000, and imprisonment not less than three months nor more than one year for a first offense, and for a second or subsequent offense by a fine not less than $500 nor more than $2,000 and imprisonment not less than six months nor more than five years.

Hearings on this bill (H. R. 728) were had before a subcommittee of the Committee on the Judiciary, and it was clearly shown that the experience of four years under the provisions of the national prohibition act had revealed the necessity for a change in penalties. For instance, according to the hearings the average fine in Florida, northern district, amounted to $52 in 1923, and the first seven months of 1924 to $80; in the eastern district of Louisiana the average fine in 1923 was $89 and for the first seven months of 1924 was but $86; in the eastern district of New York the average fine in 1923 was $55 and for the first seven months in 1924 was $135.

In a report recently filed by a subcommittee of the Committee on the District of Columbia, which committee made an investigation as to the illicit sale and use of intoxicants in the District of Columbia, we are informed that—

The fines which are being imposed upon violators of the prohibition law by the courts are wholly inadequate. In 1922 the average fine for violation of the national prohibition act in the District was $43.67. In 1923 it was $79.43. It is apparent that fines of such small proportions constitute no deterrent to bootleggers. It is much less than a license. The average fine in the District is much less than for the United States, which was $170 in 1923. It is not possible to obtain exact statistics showing the average prison sentences imposed in the District. The evidence fully established that jail sentences are very few. The average in the District is much lower than the average for the entire United States, which is 29½ days. Jail sentences, in cases in which they may be imposed under the law, constitute the only deterrent to violators of the liquor laws.

The inadequacy of the penalties which are being imposed in the District is further reflected in the number of cases of persons arrested for second offenses. The statistics show that from January 1, 1923, to March 20, 1924, 363 persons were arrested charged with second offenses against the prohibition laws of the District of Columbia. Much of the congestion of the dockets of the court would be eliminated if heavier penalties were imposed. The number of second offenses would also be materially reduced.

The Assistant Attorney General in charge of liquor prosecutions for the Justice Department at the hearings on this bill stated:

It is notable that this bill discriminates very carefully and I believe very judiciously between the violations of the prohibition statutes that are generally frowned upon by everybody carrying out the existing law, to wit, the commercial violations, and placing a minimum jail sentence for those. It does not disturb the present provision that a judge may release a defendant found guilty only of the possession feature of the national prohibition act without a jail sentence.

The inadequacy of the national prohibition act has compelled the Department of Justice to issue instructions to United States attorneys, almost two years ago—more than a year ago—asking them wherever possible to secure heavy sentences for commercial violations of the prohibition laws, and as a means of so doing resort, when possible, to revenue sections instead of using the national prohibition act.

It was pointed out at the hearings that practically all of the penalties for violation of the revenue laws carry a very heavy money

fine and imprisonment for the first offense. These penalties in the revenue laws are the result of more than 50 years' experience in enforcing the tax provisions of the revenue laws, and it was found necessary not only to carry heavy minimum fines but imprisonment also for the first offense, if these laws affecting liquor were to be effective. (See secs. 3257, 3258, 3259, 3260, 3266, 3268, 3229, 3281, 3282, 3296, 3305, 3306, 3317, 3318, 3326 of the Federal Statutes, all of which carry minimum fines and imprisonment for first-offense violations.)

It is believed by representatives of the Department of Justice, as well as advocates of prohibition enforcement, who appeared before the committee, that penalties prescribed at this time are such that many judges give an exceedingly low fine, which amounts to practically a license fee for law violation. Long lists of fines amounting to $5, $10, and $25 are imposed for the violation of this law.

The proposed measure discriminates between the various offenses. For instance, for possession and transportation, a money fine only is imposed for a first offense, money fine or imprisonment for a second offense, and a money fine and imprisonment for a third offense. As above indicated, one can not be imprisoned for a first offense for the possession of liquor under this section.

Much difficulty has been experienced in the enforcement of the law by reason of the forging of permits for the withdrawal of liquor, as well as with forged prescription blanks. Large numbers of these permits are being forged and there is no penalty in this law for such forging. If this practice is to be stopped this offense should carry a heavy penalty.

The important change in the law is the fixing of a minimum penalty for violations of the prohibition act. The judges' discretion between the minimum and maximum penalty is not interfered with. The abuse which has arisen in giving entirley inadequate penalties has had a tendency in many places to create the impression that violation of the national prohibition act is a trivial matter.

The following States have fixed a minimum penalty for violation of their prohibition laws: Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. (See pp. 16, 17, 18, and 19 of the hearing before the Committee on the Judiciary on H. R. 728, March 11, 1924.)

It is manifest that if with practical unanimity the States have found it necessary to fix a minimum penalty for the violation of the law, that the national prohibition act should have such a provision in it. It is believed that these amendments will help to impress upon those who are violating the Constitution that it is not a trivial matter nor a joke. The President of the United States said in his message to the governors at the law enforcement conference October 20, 1923:

> A government which does not enforce its laws is unworthy of the name of a government, and can not expect to hold either the support of its own citizens or the respect of the informed opinion of the world.

It is of the opinion of the majority of the committee that these increased penalties will materially aid in the enforcement of the national prohibition law.

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68TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 1257
2d Session } { Part 2

AMENDMENT OF THE NATIONAL PROHIBITION ACT AS AMENDED AND SUPPLEMENTED

JANUARY 23, 1925.—Referred to the House Calendar and ordered to be printed

Mr. GRAHAM, from the Committee on the Judiciary, submitted the following

MINORITY REPORT

[To accompany H. R. 728]

In presenting a minority report upon this bill I wish it clearly understood that it is made without any desire to interfere with or oppose in any manner the eighteenth amendment or the Volstead Act. Both these measures are now the law of the land, and as a Member of Congress I stand for law enforcement. The present measure appears to violate two principles. One is the constitutional provision against "unusual punishments" (amendment 8); and it also violates the well-established and human element in the administration of justice which leaves to the courts the adjustment of punishment to fit the facts of each particular case.

It is idle to suppose that increasing penalties in ordinary crimina cases will secure obedience to the law. The bill seems to proceed in the spirit of vindictiveness toward offenders and enlarges the penalties to an unusual and uncalled for degree. The greatest vice in the bill is the striking out of the word "or" and inserting the word "and," which makes it compulsory for the court to impose sentence of imprisonment as well as fine in every case covered by the bill, including the case of first offenders. The policy of the law has always been to trust to the discretion of the court the application of a penalty that will fit the peculiar circumstances of each case. It is an unwise invasion of the judicial power to take away this discretionary power from the court. Many cases have and will arise in which the circumstances would not warrant the imposition of a prison sentence, placing the stigma of convict upon the offender, who may perhaps be a first offender without particular purpose or desire to violate the law but who has been guilty of some infraction thereof.

Again, it takes away from the court the power to consider what is a real difficulty in the dual jurisdiction of Federal and State courts. Under a system of double enforcement all that happens in the State

courts goes for nothing in the Federal courts. Conviction, sentence, and term of imprisonment in a State prison are held to be no bar to further criminal proceedings for the same act in a Federal court with a further imprisonment in a Federal prison. Acquittals in a State court afford no protection to the acquitted one against further indictment and trial on the same charge in the Federal court, nor against imprisonment in a Federal prison in case of conviction.

In United States *v.* Lanza (U. S. Repts., vol. 260, p. 378) this subject is fully discussed, and it was there held that:

> When the same act is an offense against both State and Federal Governments, its prosecution and punishment by the latter after prosecution and punishment by the former, is not double jeopardy, within the fifth amendment. (P. 382.)

Chief Justice Taft in his opinion said:

> But it is not for us to discuss the wisdom of legislation, it is enough for us to hold that, in the absence of special provision by Congress, conviction and punishment in a State court under a State law for making, transporting, and selling intoxicating liquors is not a bar to prosecution in a court of the United States under the Federal law for the same acts.

It is thus shown that under the present bill the power will be taken away from the judge in the exercise of a sound discretion where an offender had been tried and convicted under a State statute to impose a nominal fine if his sense of right and justice led him to the conclusion that it would be sufficient. The substitution of "and" for "or" would necessitate the imposing of a prison sentence as well as a fine, and the fixing of minimum punishment with regard to fine and imprisonment would take away all discretion, so that he would be unable to impose a nominal fine or say that the prisoner could go with a single day of imprisonment.

This deprivation of judicial discretion is all the more severe and unjust in view of the fact that the Supreme Court of the United States has decided that a court of the United States is without power to suspend sentence in any criminal case.

The imposition of severe penalties and making them obligatory upon the court will not conduce to the greater success in prosecution of liquor cases. It will inevitably cause juries to balk at the conviction of a person charged with violation of the Volstead Act when the conviction would inevitably be followed by a prison sentence, even in the case of a first offender, staining such offender as a prison convict, required to pass through life as a "jail bird."

It is not true, as claimed by the proponents of this bill, that these changes only apply to commercial malefactors. It applies to any violation of the prohibition law, and is broad enough to take in every minor case, as illustrated by Mrs. Willebrandt in the hearings, where she says—

> That the act applies to anyone engaged in selling or manufacturing, from which classes the largest number of criminals are convicted.

Then in defining "manufacture", Mrs. Willebrandt says:

> Yes; particularly with this kind of manufacture—the securing of alcohol and then putting coloring matter in it or a few juniper berries in it. * * * That is manufacture.

One can readily see how the most trivial case could arise under the word "manufacture". The farmer who converts the cider from his apples into an intoxicating liquid by simply allowing it to ferment

would be manufacturing under the Volstead Act. An individual who procured some alcohol and mixed with it a few juniper berries, thus making what has been termed, I think, synthetic gin, would also be guilty under the word "manufacture".

Surely it is not wise to take away the discretionary power of the court in dealing with such trivial cases, and yet this bill, if enacted into law, will do that very thing.

The greatest trouble with the enforcement of prohibition legislation is the attention that is given by courts and prosecuting officers to the arrest and prosecution of trivial offenders, instead of confining it strictly to those who as "bootleggers" or "commercial dealers" violate the law.

This bill ought not to pass.

GEORGE S. GRAHAM.
FRED H. DOMINICK.